Knox, John Jay

Reply of the comptroller of the currency...

Washington

1879

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Reply of the comptroller of the currency and of the receiver of the national bank of the state of Missouri to the letter of William H. Bliss...
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REPLY

OF THE

COMPTROLLER OF THE CURRENCY

AND OF

THE RECEIVER OF THE NATIONAL BANK OF THE STATE OF MISSOURI,

TO THE

LETTER OF WILLIAM H. BLISS,

U. S. DISTRICT ATTORNEY, ST. LOUIS,

ADDRESSED TO THE

ATTORNEY-GENERAL OF THE UNITED STATES.

WASHINGTON.
1879.

REPLY OF THE COMPTROLLER.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
Washington, October 29, 1879.

SIR: I had the honor to acknowledge on the 17th inst. the receipt, by reference from your office, of a letter of the Attorney-General of the 16th inst., transmitting a communication of William H. Bliss, Esq., United States Attorney for the Eastern District of Missouri, relative "to the position assumed by the Comptroller of the Currency in the matter of the prosecution of the officers of the late National Bank of the State of Missouri, now under indictment for violation of the National Banking law."

In my letter of acknowledgment I advised you that a copy of this communication would be forwarded to the Receiver of the bank for report, which was immediately done, and I have now his reply thereto, which I herewith enclose. In the meantime, and without affording me a reasonable opportunity to make my answer, the report of the District Attorney has, through his own procurement no doubt, been published in full in the public prints, accompanied, in some instances, by startling and conspicuous head-lines, attributing to me the grossest official negligence and malfeasance in office. I am the more surprised by these misrepresentations and by this display of malevolence on the part of the District Attorney, in view of the fact that from the time I went to St. Louis up to the date of his communication—a period of nearly ten months—he had never, so far as I know or have heard, made any complaint to his superior officers as to my official conduct or as to that of the Receiver. As no request from him for official action or information has ever been for a moment neglected or denied by me or by the Receiver, I had no cause to suspect, and did not suspect, that I was the object of the hostility which he now makes public.

The only formal complaint made in intelligible or unambiguous terms, concerning my action in relation to the criminal proceedings referred to, appears to be that I have misunderstood or failed to obey the public statutes which define my duties, and that I am not in sympathy with the public prosecutor in his efforts to bring to justice the violators of the National Banking law. The charges, however, which are made by indirection and innuendo, rather than by any definite allegation, and

which he evidently wishes to have read between the lines of his letter, are, that I have in some way screened or wish to screen from the consequences of their crime the officers and employés of the bank; that I have withheld information essential to the successful prosecution of officers of the bank charged with offences against the law; that I have in some way prevented or desired to prevent investigation of the affairs of the bank; and that I have not given my official sanction to the prosecution of the particular cases to which he refers. These charges—those that are made by vague intimations as well as those definitely alleged, I declare to be maliciously false; and I believe them to have been made, not from a sense of public duty, but to subserve personal and unworthy motives and purposes. So far as they relate to me in my official conduct and motives, I *know* them to be false. So far as they relate to the Receiver and his conduct and motives, I believe them to be false; and their falsity is made plainly apparent by the records of this bureau and by the public history of the transactions in question.

Some months before the failure of the bank, having received unfavorable information as to its condition and management, I sent an expert examiner from Chicago, with instructions to make a searching inquiry into its condition. After careful inquiry by the examiner selected by me, Mr. William P. Watson, he sent to me a full report relating to the assets, liabilities, and the condition of the bank, stating that about forty per cent. of its capital was gone. He also informed me that the last report which had been transmitted to me from the bank was incorrect as to the amount of past-due paper and the character of the cash items. Upon receiving the examiner's report, I at once required that there should be a reorganization of the board of directors, and the board thus organized—one of its members being Hon. John B. Henderson, an ex-Senator of the United States, a well-known citizen of St. Louis, and a lawyer of high standing—were put upon inquiry to ascertain the true condition of the bank, by the full and explicit letter which I had written, under the date of March 31, 1877, pointing out what was improper and needed correction in the administration of the bank's affairs, which letter was in their possession.

In June, 1877, the new board, after weeks of searching investigation into the condition of the bank, informed me that it was insolvent, and on the 23d of that month I appointed as Receiver of the bank Mr. Walter S. Johnston, who had previously had much experience in closing up insolvent banks, and who was not a resident of St. Louis, was unacquainted with any one connected with the bank, in no way involved in its complications, and in whose tried ability, integrity, and experience I

had reason to place the most implicit confidence. The business incident to the payment of its creditors and the winding up of the affairs of the bank has been conducted by the Receiver with noticeable vigor and success. Since his appointment, the Receiver has paid dividends amounting to seventy per cent. of the claims proved against the bank, and has distributed more than fifteen hundred thousand dollars in cash to its creditors.

On the 14th of December, 1878, in compliance with a telegram received from the District Attorney, I sent to him, by express, the originals of all reports and oaths of directors requested by him, contrary to the regulations of the Treasury Department, and directed the Receiver to give him a copy of the report of Examiner Watson, which was in his possession.

On the 23d of December, 1878, I received a despatch from the District Attorney, requesting my immediate presence in St. Louis. After a delay of two days, which was occasioned by my effort, made by the advice of the Assistant Solicitor of the Treasury, to communicate with the judge in St. Louis, I left for that city and appeared before the grand jury on December 27.

I do not think it permissible to follow the example of the District Attorney, and state what occurred in the grand-jury room, further than to say that all the information I had relative to the bank and its management was communicated to the grand jury without any evasion, reservation, or concealment whatsoever; and that all the records of the bank and information possessed by any person under my control, were placed at its full disposal and subject to its action. The result was that indictments were found against the president, vice-president, and cashier of the bank. At a later day another grand jury took into consideration the conduct of the officers of the bank, and it, too, was furnished with all the information in possession of this office and of the Receiver; and an officer of this bureau was dispatched to St. Louis, on May 1, 1879, who testified before the grand jury as to what he knew relative to the affairs of the bank.

From that time up to the day of his complaint to the Attorney-General, the District Attorney has never sought my advice or given me any information concerning these criminal prosecutions, nor has he made application to me, or to the Receiver, so far as I am informed, for any action, aid, or sympathy in his proceedings against the persons accused and now under indictment.

It is not true that I am now, or have at any time been, in any way antagonistic or averse to the prosecution of the persons indicted; or

that I have been unwilling or indisposed to have the cases brought to trial. On the contrary, I have always been ready to co-operate with the District Attorney, and to place at his disposal the necessary records and papers of this bureau.

I come now to the consideration of the complaints made by the District Attorney relating to the occurrences subsequent to the finding of the indictments already mentioned. The indictments were found nearly a year ago, but the accused have not yet been brought to trial. The District Attorney does not venture to assert that this delay has resulted from any fault or negligence on my part, or that I have directly or indirectly hindered or prevented a prompt and vigorous administration of the law. He knows that such a charge would be so obviously false and unfounded that it would be injurious rather than useful to his purpose. He prefers, therefore, to convey indirectly the impression that my action in securing the payment of money by Mr. Eads, the surrender to him of the evidence of his indebtedness, the action of the Receiver in reference to the custody of the books of the bank, and in retaining Hon. John B. Henderson as his counsel after he had become, as is alleged, counsel for one of the persons against whom an indictment had been found, and in retaining in his employ the late cashier, who is now under indictment, have, in some unexplained way, injuriously affected the interests of the prosecution.

It is true that, on the advice of the Receiver and his counsel, I did, having first obtained an order of a competent court, as provided by law, accept from Mr. Eads the payment of a large sum of money in full satisfaction of his indebtedness to the bank. I accepted it, because I believed the settlement to be of vital importance to the interests of the creditors of the bank; but in so doing I did not condone any infraction of the law, nor did I intend to deprive the prosecution of any evidence which the District Attorney intended or desired to use. If the District Attorney had desired the retention of the notes which, I am informed by his communication, were produced before the grand jury, he should have so informed the Receiver when he returned the notes to him, after he had made what use he wished of them.

As to the action of the Receiver, I never knew, until I read the District Attorney's complaint to the Attorney-General, that the late cashier continued in the employ of the Receiver after the finding of the indictments, or that Mr. Henderson was the counsel for one of the accused officials. I had not heard that the District Attorney had ever had any difficulty in obtaining access to the books of the bank. It would naturally be supposed that, if the District Attorney sincerely entertained

the belief that these matters were detrimental to the public service, he would have felt it to be his duty as a public officer to give to me or some officer of the Government timely information and notice, by telegraph or otherwise, of his objections. From his silence, the unavoidable inference is that he considered them frivolous and insignificant, as they really are, and that he has brought them into notice merely to subserve his own interests.

In explanation of the continued employment of the late cashier of the bank, it appears that the Receiver considered it important that the bank should have the benefit of his knowledge of its books and business. It also appears that the District Attorney informed the Receiver that there was no need to discharge Mr. Curtis, and that he did not know that his case would come to trial.

It is but just to the Receiver that I should quote from his letter his reasons for the retention of Mr. Curtis, and also his statement concerning his counsel and the custody of the books of the bank.

He says:

I found Mr. Curtis here on hand, the cashier of the bank for ten years, a man of "natural moral excellence" and "fine business habits," to quote Mr. Bank-Examiner Watson's report. He was familiar with every book, paper, and transaction in the bank—and their name is legion—and could in a moment lay his hands on any paper or entry wanted in the vast mass and array of records. He was the necessary and indispensable witness in the important litigation of the bank, involving enormous pecuniary demands *pro* and *con*. There was but one other officer comparable to him in usefulness to creditors, and that was the assistant cashier, equally guilty as the cashier, if there be any guilt in the alleged false entries and reports, who refused my offer of retention as too low pay for so important a person as the late assistant cashier of this bank, but who is the person referred to by the United States District Attorney as furnishing the "expert services of the late employé" in informing on his old employers, in return for which we have the gratuitous tender of him by the District Attorney as a person "equally competent" with Mr. Curtis, whose services can be "readily obtained if desired." Mr. Curtis was continued by me as my principal assistant because I believed him to be, as I have found him to be, an invaluable assistant. He has a wife and children to support, and God forbid that I should prejudge his conduct. Let the law proceed in due course.

Mr. Bliss is egregiously mistaken in speaking of him as "employed by the United States Government." On the contrary, he is employed by me. Said the United States Supreme Court, in *Case* v. *Terrill*, 11 *Wall.*, p. 199: "The Receiver represents the bank and its creditors, and in no sense represents the United States Government." The Government does not employ or pay Mr. Curtis. And to show that the District Attorney is pitifully insincere in his complaint that Mr. Curtis has charge of the dumb mouths of these books, (any attempt at alteration of which would be manufacturing his own ruin,) I am compelled to recall the fact that immediately after his indictment, in Mr. Bliss's office,

I deprecated the prospective loss of Mr. Curtis's services; whereupon Mr. Bliss remarked that there was no need of discharging Curtis, and that he didn't know that his case would come to trial. As to the defendants having free access to the books, pray why shouldn't they? The District Attorney kept them for five months after they were indicted. Their attorneys made repeated demands of me, as a matter of simple right and justice, to see their books and papers; to which I responded constantly, that I did not intend to interfere in the slightest degree with the claim of right of possession of this very peculiar District Attorney, if he kept them all until doomsday. In point of fact, however, although the books were returned in June last, I have never once seen defendants' attorneys in this bank during office-hours making any examination of anything in these cases; and no one knows better than Mr. Bliss that he has and can come to this office without surveillance or intrusion, and that he has always been received with courtesy and familiarity, and that every request of his has been promptly met, and that Mr. Curtis (who "receives and answers" nothing, all of which is done by myself alone) has, with intelligent alacrity, furnished forth every book, paper, or piece of information requested by Mr. Bliss or by the grand jury. He, possibly, has a different theory about the effect of it all; but I vouch for his perfect integrity in furnishing the facts. Mr. Bliss never addressed me a solitary letter other than requests for such and such a book or paper or kindred matter, and whose contents might have been "known to the defence" to their hearts' content for all the good it could have done them. What nonsense this all is! I am ashamed to have to take so much time in answering it.

6. When I came here I found General Henderson virtually directing proceedings, and freshly and fully informed of the whole affairs of the bank. He was a leading attorney of high reputation for ability and probity; so I concluded to employ him in any litigation we might find necessary to commence or defend. I have from time to time employed other attorneys. Some of the accused in this matter saw fit to employ General Henderson to defend them; not by my "advice and consent," but with my knowledge and consent, although I don't see what my consent had to do with the matter. General Henderson, I presumed, could safely be trusted to square his conduct in any matter by a high sense of professional duty. I don't presume to dictate to him, nor does he ask my advice and consent about what clients he shall have, and what not; and the Comptroller of the Currency does not know, so far as I know, whether he has been retained by any of the accused or not.

I have accurately and carefully stated what my position and official action have been in relation to the affairs of the bank and the proceedings against its officers herein referred to. There can be no serious dispute as to what I have done, or left undone, because the evidence of my official acts is preserved in the records of the bureau. The only inquiry suggested by the statements I have made appears to me to be whether, in the course I have pursued, I have fully performed the duties which devolve upon me as the chief officer of this bureau, which is by statute charged "with the execution of all laws

passed by Congress relating to the issue and regulation of a national currency secured by United States bonds?"

nasmuch as section 380 of the Revised Statutes provides that "all suits and proceedings arising out of the provisions of the law governing national banking associations, in which the United States or any of its agents shall be parties, shall be conducted by the District Attorney of the several districts under the direction of the Treasury," and inasmuch as section 771 of the Revised Statutes makes it "the duty of every District Attorney to prosecute in his district all delinquents for crimes and offences cognizable under the authority of the United States," I have considered that criminal prosecutions against officers of national banks were, like prosecutions for counterfeiting national-bank notes, and for committing various other crimes against the laws of the United States, placed under the immediate charge of the attorneys of the United States, subject to the control of the Solicitor of the Treasury and the Attorney-General. It is not true, therefore, as is stated by the District Attorney, that in many past instances of criminal violations of the banking law indictments have been procured or prosecuted under the especial guidance and assistance of the Comptroller. The records of the Treasury Department and of the Department of Justice show that I have never assumed the guidance or control of criminal prosecutions, but that in almost all instances prosecutions for offences against the banking law have been commenced, carried on, and concluded by the prosecuting officers of the Government, without any consultation with the Comptroller, and without seeking or obtaining from him any aid or instructions. It has occasionally occurred that prosecutions have been begun in consequence of communications or reports received by me, and referred to the Solicitor of the Treasury, who is the legal adviser of this bureau. But it has never occurred that this bureau has assumed to have or to exercise authority to set on foot, to control, or to terminate criminal prosecutions. That authority, so far as I know, has always been claimed and exercised by the attorneys of the United States, under the direction of the Solicitor of the Treasury and the Attorney-General, but without the advice or consent, *and usually without the knowledge of this bureau.*

Section 324 of the Revised Statutes prescribes, briefly, the general duties of the Comptroller, and various other sections of the statutes specifically provide what the Comptroller shall do under certain given circumstances; that he shall require banks to keep reserve; to redeem their circulating-notes; not to wrongfully certify checks; to pay up capital stock; not to continue to hold their own stock; and the law provides that if the banks fail in any of these particulars, the Comp-

troller shall appoint a Receiver, and that for continued violations of law he shall bring suit for forfeiture of the charter of the bank.

Section 5234 of the statutes also specifically prescribes the duties of the Receiver; that he "shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and on a like order may sell all the real and personal property of such association, on such terms as the court shall direct; and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders." He is also required to pay over all moneys to the order of the Comptroller, and to make a report to him of all his acts and proceedings.

The criminal sections of the National-Bank Act do not impose any duties whatever upon the Comptroller or Receiver, but I beg leave to say that I am, and have always been, ready and willing to give to the proper officers of the Government full and prompt information of all criminal violations of the banking law, and to do everything in my power to further their efforts to secure the punishment of offenders against it; but I do not consider that I am charged with the duties or responsibilities of a public prosecutor. If I am mistaken in my construction of the law, the action of this bureau has been wrong from the day of its creation, but can be corrected in compliance with any instructions you may think proper to give.

Having, as I believe, fully answered the charges of the District Attorney, I now beg leave to call your attention to some peculiar and noticeable features in the conduct of that officer in relation to the prosecution in St. Louis, which explain the motives of his bitter and malicious attack on me, and show how little consideration his complaints are entitled to receive.

Although the circumstances which led to the failure of the bank, and the transaction in which its officers had been engaged, became matters of public notoriety and report at the time of the failure, and although the Receiver, in the fall of 1877, within six months after the failure, communicated to him all the particular causes thereof of which he had any knowledge, the District Attorney took no steps to secure a judicial inquiry into the management of the bank or the punishment of the delinquent officers and directors. Not only did the District Attorney fail to set on foot a judicial investigation or any criminal proceeding, but when the grand jury at St. Louis, more than a year after the failure, itself took the initiative and demanded that the Receiver of the bank should be required to appear before it, the District Attorney, as is

stated by the Receiver, upon information derived from the District Attorney himself, steadily opposed this demand, on the ground that the grand jury had no right to demand the presence of any witnesses except upon the direction of the District Attorney, and that he had no knowledge of the commission of any crime in relation to the management of the bank, as the Receiver had not appeared before him and made complaint upon his oath. But, finally, and in the face of the opposition of the District Attorney, and after the grand jury had made complaint in open court of their inability to obtain the attendance of the witnesses they wished to examine, as I am informed by the Receiver, the inquest was begun.

As I have already stated, I appeared before the grand jury, as did also the Receiver, and offered for their examination all the records and papers of the bank, and gave them full information as to the transactions which brought about its failure, and as to all the persons who participated in those transactions. In the course of their investigations the conduct of all the directors in reference to the mismanagement of the bank's affairs must have become known to the grand jury as fully as did the conduct of the president and vice-president and cashier. The result was that, after a long inquiry, indictments were found only against the former president, the vice-president, and the cashier of the bank, for making unearned dividends, for purchasing the stock of the bank, and for making false reports; but although there is a provision of the statute which makes the "wilful misapplication" of the funds of a national bank a crime, no indictment was found with reference to the disposition of the immense sums of money which the bank had lost by the action of the directors, nor were there any indictments found against any other directors, although it is, of course, absurd to suppose that of the board of directors, the president and vice-president were alone responsible for or concerned in the payment of unearned dividends, or for the purchase of the stock of the bank.

It is of course true, and indeed notorious, that the persons indicted were not the only or the chief offenders against the banking law. Why are there criminal proceedings now pending against the president, the vice-president, and the cashier, but not against the other directors?

One of two explanations for their immunity and escape must be true. Either the grand jury of their own motion dismissed their cases from consideration, or its action was caused by the advice and influence of the District Attorney. As the District Attorney has felt at liberty to repeat and publish in part the testimony which he says I gave before the grand jury, he will, perhaps, not be unwilling to state what communications he made, what influence he exercised, and what advice

he gave to the grand jury to induce them to ignore the grave offences of the other directors, and to fix their attention upon and confine their action to the acts of the president and the vice-president alone. He will, perhaps, also state whether or not he informed me, without solicitation, in his own office, and other persons elsewhere, of his proposed visit to Washington for consultation, and if such visit was not afterwards brought about by his own contrivance, and also whether or not such visit did not interrupt the business of the grand jury, and was not made for the purpose of obtaining instructions that would relieve him of the duty of instituting criminal proceedings against those who had misapplied the funds of the bank.

My own action, from the inception of the proceedings in question to the present time, has been absolutely impartial. I have favored no directors or set of directors. I have fully stated all facts within my knowledge. I have neither modified my official action nor withheld information in consideration of its probable effects upon certain individuals. Can the District Attorney say as much for his own official conduct?

The public, to which the District Attorney refers, will probably take very little notice of any controversy between that officer and myself; but it has not failed to notice the fact that no one has, up to the present time, been criminally punished for any offence committed in the management of the bank, and that with the reference to the most flagrant offences committed by the directors no prosecution whatever has been commenced.

It is my earnest wish that some competent and impartial person may be directed to make a careful scrutiny into the cause of this conspicuous and scandalous failure of justice, not forgetting to inquire of the grand jury what transpired during their investigation, and what personal advice the District Attorney gave to certain members of the jury in reference to screening those directors who were equally guilty with those indicted. It will give me pleasure to have my conduct, in its minutest particulars, made the subject of the most thorough examination and criticism, and I will cheerfully abide by and accept the result of such an inquiry.

In the meantime, I take occasion to express the conviction, formed deliberately and on sufficient ground, as I believe, that the purpose of the District Attorney, in making false and groundless charges against me, is to divert attention from his own gross negligence and omissions of duty, and to conceal the partiality and inefficiency of his official conduct, and to prepare the public mind in advance for the probable failure, through some weakness or defect in the testimony or in his indictments, of the prosecution to which he refers.

I have the honor to be, very respectfully,

JOHN JAY KNOX,
Comptroller of the Currency.

HON. JOHN SHERMAN,
Secretary of the Treasury.

REPLY OF THE RECEIVER.

NATIONAL BANK OF THE STATE OF MISSOURI,
Receiver's Office, St. Louis, October 20, 1879.

SIR: I am in receipt of the copy of a certain letter dated October 11, instant, from Mr. Wm. H. Bliss, United States Attorney here, to the Attorney-General, mailed to me by you on the 18th instant, as enclosure of yours of that date asking for a reply thereto.

The letter of Mr. Bliss is a very surprising exhibition of a very poor, very unworthy, but very evident malice. I cannot conceive, nor do I believe, that it was written or sent for any legitimate purpose touching the due progress of proceedings in reference to the offences alleged against some of the former directory of this bank. I cannot understand why these cases cannot be proceeded with, tried, and concluded with the dignity due to their gravity, without so much preliminary heat and fluster, inspirations to newspapers and letter-writing to the Attorney-General, full of allegations and insinuations, wholly and gratuitously false in all their length and breadth. Taking up, *seriatim*, the statements of this letter, let us see how plain a tale will answer them:

1. Mr. Bliss says he did not know anything about the causes, "particular causes," which led to the failure of this bank until December, 1878.

This bank failed June 23, 1877. Being a very large corporation, very old and famous in this section, its suspension caused a notorious sensation. In almost every county in the State its creditors or share-holders resided. The city and country press, and every intelligent mouth, were full of allegations of all sorts of mismanagement as causes of its failure. Any grand jury drawn from this State, subsequent to its failure, would naturally, and one would imagine as a moral certainty, take up the investigation of so notorious a failure, and order the subpœnaing of witnesses, for inquiry at least. Yet the fall term of 1877, and the spring term of 1878, came and went without such inquiry. But the grand jury for the fall term of 1878 demanded, and insisted upon their right to demand, that I be subpœnaed to testify in an inquiry they proposed to make into the affairs of this bank. The District Attorney informed me that he steadily opposed this demand, on the ground that the grand jury had no right to demand the presence of witnesses in any matter, unless the initiative was taken by the District Attorney, and that he

had no knowledge of any crime here, as I had not appeared before him and sworn to any.

The grand jury came into court and complained of this denial of what they considered their plain right, and insisted upon their right to summon me, whether I chose to volunteer to charge, and assume the responsibility of alleging, that anybody had committed crimes in this bank, or not. This righteous insistence on their rights by the grand jury caused quite a flutter over there in the court circles, and, although the grand jury were politely informed that unless twelve of them knew of a crime, personally knew of it, they had no right to originate an inquiry, but that the accused had a right to a preliminary hearing before a commissioner, where witnesses would have to volunteer to assert, and take the responsibility of asserting, that a crime had been committed by somebody, yet there was such a protest in the air against what was considered by the public (that same "public" to which the District Attorney refers in his letter in such a large way, as having been engaged, amidst their many other avocations, in "watching" him and me,) as an evident attempt by somebody to muzzle this aggressive, insistent jury, that, just as they were about to adjourn, their demands were unexpectedly yielded to. Two small creditors were brought forward to do duty as affiants before the District Attorney, that, in their belief, crimes had been committed here by somebody, whereupon subpœnas were issued to me to appear before the grand jury. There was nothing in the world to have prevented this being done a year before. In the winter of 1877, six months after the failure of this bank, I met Mr. Bliss in Washington, and detailed to him all the "particular causes" of this failure of which I had any knowledge.

Right here it will be better to anticipate what Mr. Bliss says further on, about the Comptroller's duty in reference to the criminal clauses of the National Bank Act. The duties of the Comptroller in regard to the organization, custody of bonds, issue of currency, examinations, reception of reports, and procedure in liquidation, are all specifically set forth. Then there is a penal section to punish embezzlements and kindred criminal breaches of trust. This latter is criminal law, and its enforcement belongs to the officers of the Department of Justice. The former is civil administration, and belongs to a bureau of the Treasury. If a cashier of a national bank were to embezzle $50,000 to-morrow, the news of the crime could not reach the Currency Bureau by any other channel than it reaches the general public. The Comptroller would have nothing on earth to do with the fact, but I submit that the District Attorney and his grand juries would have everything to say and do about it.

When I took charge here I verified the amount of assets called for by the books, and proceeded, with all the industry, care, and conscientious devotion to the best interests of creditors of which I was capable, to speedily liquidate, pay out, and wind up the assets of the bank. I did not spend any time in grubbing up past reports to ascertain if somebody had not made false reports, and, if so, to critically balance, as a criminal lawyer, whether this somebody was not caught in the embrace of the criminal law of this country. Neither did I undertake to assert and determine that the borrowings of the directory, although they evaded the stiff definitions of an embezzlement, might be labeled as "wilful misapplications." I never reported to you that I knew of any infractions of the criminal laws. I never made any report or statement on the subject. I was ready, and always will be ready, to furnish all the books and papers of this bank to any and every officer and body charged by law with the right and duty of inquiry, whenever specific allegation or common report locates the probability of misdemeanors. That is the legitimate demand on the Receiver. He could not testify of his own knowledge of acts done before he ever heard of the National Bank of the State of Missouri. The witnesses of the acts charged as being, or suspected of being, criminal, are the clerks, book-keepers, tellers, and cashiers, and other executive officers, all of whom were and are in the city, subject to a grand jury's beck and call.

Since the organization of the national banks in 1864, I believe there have been but eight or ten indictments found for misdemeanors under the larceny act. In every case, as I now recall them, the embezzlements were bold taking of money or bonds, and the false entries and reports evidently made to conceal such facts. In the cases at hand it seems that, after forty-seven days of labor, Mr. Bliss and his grand jury brought forth indictments against three persons, without half concluding their labors. And the next grand jury simply re-indicted the same three, after another long siege. And what are they indicted for? There isn't a single count for embezzlement. There isn't a single count alleging that the large borrowings of the directory were criminal misapplications of the funds. But they are indicted, one president, one director, and one cashier, for declaring dividends unearned, purchasing the bank's capital stock when the law forbids the bank to buy, and the making of false reports by the cashier concerning the amount of bad debts held by the bank, and kindred charges. It will be perceived, therefore, that there was nothing bold, tangible, easily grasped, about the alleged misdemeanors here, and that when the grand jury and the District Attorney were forty-seven days getting only half through,

and then bringing in what may be designated as argumentative crimes (I don't say they are not crimes, but there may be a deal of argument about them), I may be pardoned for not stepping forward hastily and assuming the role of a prosecuting witness, without so much as having been even subpœnaed.

Mr. Bliss says that the records of the Treasury Department and Department of Justice show that the Comptroller has taken the initiative in, and gave special guidance and care to, criminal cases against officers of national banks. I deny that in toto. To my knowledge you have, at the request of Receivers, or District Attorneys, or interested parties, forwarded, with recommendation or not, applications for additional counsel, applications for inquiry by the District Attorneys or grand juries into the affairs of a bank, to the Solicitor of the Treasury or to the Attorney-General; but, to my own knowledge, all matters in reference to criminal proceedings, about which there was any action of the Comptroller of the Currency, passed through his office mainly as a medium of bringing into action the proper officers whose especial duty it is to inquire into, ferret out, and punish criminals.

2. Mr. Bliss says that the grand jury were for a long time ready to return indictments, and waited long, and some of them got sick, &c.; and that somebody went to see the Attorney-General, and tried to get the investigation defeated, &c. Well, in the name of common sense, who kept the grand jury waiting? Who went to Washington? What had you or I to do with it? Nothing.

3. The District Attorney says that neither the Comptroller nor the Receiver had, except to furnish upon application the records of the Department and the bank, in any way aided or encouraged him. That "exception" is a very large one. You gave a week to come out here and testify. I was before the grand jury for probably a week in all. From the 5th of December, 1878, to the 21st of June, 1879, every book of this bank, and every paper in any way connected with or bearing upon these cases in the remotest manner, was in the office and personal possession of Mr. William H. Bliss, United States District Attorney. The entries of my own business as Receiver had to be made on memorandum slips. From the 20th of January, 1879, after the first batch of indictments were found and the grand jury discharged, these books and papers, all of them, were, much to the detriment of my business, my civil cases, and the keeping of my records, still retained by the District Attorney until, as I have said, the end of June. Every paper that he has called for has been immediately and with scrupulous care delivered to him. They always will be. What further does the District Attorney

want? There has never been another criminal case where the Comptroller ever met even the District Attorney, or ever testified; yet in this matter I had fancied that the Comptroller had had rather considerable intimacy with the District Attorney, both in his visit here and Mr. Bliss's visit to Washington. I presume the Government of the United States, through its courts and prosecuting officers, can conduct a criminal case to a conclusion without the "aid or encouragement" of anybody.

4. It is not worth while to encumber this letter with any reply to the long-winded and ridiculously irrelevant homily that the District Attorney gets rid of, about the Comptroller trying to get off dividends to creditors at the expense of his country's virtue. The pith of those long sentences, if there is any pith in them, is blown aside by the fact that the Comptroller never had anything to refer to the Solicitor or Attorney-General. He never had anything from me, and I am sure knew nothing of his own knowledge. The indictments came, in just course, not by any request of his or mine, but, as they might have come a year before they did, by the subpœnas of the United States prosecuting attorney, sending for me to produce the bank's books and papers before the United States grand jury for an inquiry. * * * *

5. Mr. Watson was sent here by you purposely, without warning, and from a distant district, to make a thorough examination of this bank. He reported many violations of law, bad management, and false reports in not segregating a sufficient quantity of debt as bad, as counting cash items as cash, &c. But he reported the losses as only about 40 per cent. of the capital; that is, that the stock was worth about 60, a very general market rate at that period for bank-stocks. Without publishing the calamities of a crippled bank, the Comptroller very fully and very distinctly directed a course of procedure which in his judgment might change the management, get at the real loss, reduce the capital by that amount, and save the bank. You ordered the immediate election of a new directory of nine, saying distinctly that this new board would see the wisdom of ascertaining at once the exact condition of the bank, and act accordingly. The new board did proceed to examine the bank, with General Henderson at the head of the committee, and finally reported the bank's capital as entirely lost and the bank insolvent, and asked for a Receiver.

I found Mr. Curtis here on hand, the cashier of the bank for ten years, a man of "natural moral excellence" and "fine business habits," to quote Mr. Bank-Examiner Watson's report. He was familiar with every book, paper, and transaction in the bank—and their name is

legion—and could in a moment lay his hands on any paper or entry wanted, in the vast mass and array of records. He was the necessary and indispensable witness in the important litigation of the bank, involving enormous pecuniary demands *pro* and *con*. There was but one other officer comparable to him in usefulness to creditors, and that was the assistant cashier, equally guilty as the cashier, if there be any guilt in the alleged false entries and reports, who refused my offer of retention as too low pay for so important a person as the late assistant cashier of this bank, but who is the person referred to by the United States District Attorney as furnishing the "expert services of a late employé" in informing on his old employers, in return for which we have the gratuitous tender of him by the District Attorney, as a person "equally competent" with Mr. Curtis, whose services can be "readily obtained if desired." Mr. Curtis was continued by me as my principal assistant because I believed him to be, as I have found him to be, an invaluable assistant. He has a wife and children to support, and God forbid that I should prejudge his conduct. Let the law proceed in due course.

Mr. Bliss is egregiously mistaken in speaking of him as "employed by the United States Government." On the contrary, he is employed by me. Said the United States Supreme Court, in *Case* vs. *Terrill*, 11 *Wallace*, p. 199: "The Receiver represents the bank and its creditors, and in no sense represents the United States Government." The Government does not employ or pay Mr. Curtis. And to show that the District Attorney is pitifully insincere in his complaint that Mr. Curtis has charge of the dumb mouths of these books (any attempt at alteration of which would be manufacturing his own ruin), I am compelled to recall the fact that immediately after his indictment, in Mr. Bliss' office, I deprecated the prospective loss of Mr. Curtis' services, whereupon Mr. Bliss remarked that there was no need of discharging Curtis, and that he didn't know that his case would come to trial.

As to the defendants having free access to the books, pray why shouldn't they? The District Attorney kept them for five months after they were indicted. Their attorneys made repeated demands of me, as a matter of simple right and justice, to see the books and papers, to which I responded constantly that I did not intend to interfere in the slightest degree with the claim of right of possession of this very peculiar District Attorney, if he kept them all until doomsday. In point of fact, however, although the books were returned in June last, I have never once seen defendant's attorneys in this bank during office-hours making any examination of anything in these cases, and no one knows better than Mr. Bliss that he has, and can, come to this office without

surveillance or intrusion, and that he has always been received with courtesy and familiarity, and that every request of his has been promptly met, and that Mr. Curtis (who "receives and answers" nothing, all of which is done by myself alone) has, with intelligent alacrity, furnished forth every book, paper, or piece of information requested by Mr. Bliss or by the grand jury. He, possibly, has a different theory about the effect of it all, but I vouch for his perfect integrity in furnishing the facts.

Mr. Bliss never addressed me a solitary letter other than requests for such and such a book or paper or kindred matter, and whose contents might have been "known to the defence" to their hearts' content, for all the good it could have done them. What nonsense this all is! I am ashamed to have to take so much time in answering it.

6. When I came here I found General Henderson virtually directing proceedings, and freshly and fully informed of the whole affairs of the bank. He was a leading attorney of high reputation for ability and probity; so I concluded to employ him in any litigation we might find necessary to commence or defend. I have, from time to time, employed other attorneys. Some of the accused in this matter saw fit to employ General Henderson to defend them, not by my "advice and consent," but with my knowledge and consent, although I don't see what my consent had to do with the matter. General Henderson, I presume, could safely be trusted to square his conduct in any matter by a high sense of professional duty. I don't presume to dictate to him, nor does he ask my advice and consent about what clients he shall have, and what not; and the Comptroller of the Currency does not know, so far as I know, whether he has been retained by any of the accused or not.

7. Mr. Bliss says that certain notes of Mr. Eads were delivered up to him upon his payment of them in compromise. Well, when anybody wants to pay a note in here, I generally let him do it without regard to the United States District Attorney. I should think he would be glad to have it done—it is so uncommon.

8. The District Attorney writes largely about the "public" that "watches," &c. The most interested "public" in regard to this bank are its creditors and share-holders. The former have received already 70 per cent. of their claims, and will get 10 per cent. more before the new year, in every probability, and 10 per cent. more in the spring or early summer, making 90 per cent.; after which, in time, it is possible another 10 per cent., par in all, may be reached. The latter, by representatives from the East and West, have very frequently visited my office. Some of them, of an especially representative character, know

as much of the bank's condition as I do, and always have. Every large and important transaction of mine was done after being fully talked over with some of them. They are at this moment engaged, East and West, in preparing to pay, voluntarily, any call it may be necessary to make on them. As for the rest of the public I am not sure that they have any interest in me; and it would appear from the accompanying extracts from the newspapers here, in reference to this astonishing performance of the District Attorney, that they don't take that cheerful interest in him which he seemed so confidently to expect. * * *

Very respectfully,

WALTER S. JOHNSTON,
Receiver.

Hon. JNO. JAY KNOX,
Comptroller of the Currency, Washington, D. C.

END OF
TITLE